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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

RIVER CITY MEDIA, LLC, et al.,

Plaintiffs,

V.

KROMTECH ALLIANCE CORPORATION, et al.,

Defendants.

Case No. 2:17-cv-00105-SAB

**JOINT CERTIFICATE OF
COMPLIANCE WITH STATUS
CONFERENCE ORDER AND
RULE 26(f) DISCOVERY
SCHEDULING AND PLANNING
CONFERENCE REPORT**

1 In accordance with the Court's October 27, 2017, Notice Setting Telephonic
2 Scheduling Conference (the "Conference Notice") and Rule 26(f), Federal Rules
3 of Civil Procedure, a meeting was held on November 15, 2017 and was attended by:
4 Attorneys for Plaintiffs River City Media, LLC, Amber Paul, Mark Ferris and
5 Matt Ferris:

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10 Counsel for Defendant Chris Vickery:

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14 Seattle, WA 98104

15 Counsel for Defendants CXO, IDG, and Steve Ragan:

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21 Kevin J. Curtis
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23 601 W. Riverside #1900
24 Spokane, WA 99201

25 Counsel for Defendant Kromtech Alliance Corp. ("Kromtech"):

26 Matthew D. Brown
27 Amy M. Smith
28 Cooley LLP
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At that telephonic meeting, the parties conferred on the topics required by the Conference Notice and Federal Rule 26(f) and report the following:

- A. The parties discussed the nature and basis of their claims. The following statements present the particular views of the identified party or parties:
1. **Plaintiffs:** Since 2009, Matt Ferris, Mark Ferris, Amber Paul, and others have operated River City Media, LLC, a successful marketing company based in Eastern Washington. River City is used by some of the world's most recognizable brands, including MetLife, LifeLock, Liberty Mutual, Match.com, DirectTV, and Lyft. River City consistently produces transparent, clean, and quality email marketing campaigns. River City has never been investigated—let alone sued—by anyone for violating regulations on email marketing. As such, River City has always had a sterling reputation in the industry. But that reputation was destroyed after Defendants perpetrated a coordinated, months-long cyberattack against River City and its principals. The stated purpose was to destroy Plaintiffs' business and reputations. One of the defendants, Chris Vickery, has a long history of using illegal methods to gain unlawful and unauthorized access to private databases and then publicizing his findings in order to make a name for himself as a security researcher. Here, Vickery attacked River City's electronic infrastructure, spent months worming his way through River City's networks, collected confidential, proprietary, and sensitive data, and used it to intentionally harm River City's information technology systems. Vickery then convinced the remaining Defendants to assist him in publicizing and “exposing” Plaintiffs by publishing multiple false and defamatory articles on their blogs and news websites. This served only to compound and magnify the harm caused by the cyberattack on River City's digital infrastructure.

1 Defendants' criminal actions caused immense damage to Plaintiffs'
 2 businesses, reputations, livelihoods, and physical and mental health.
 3 River City has now gone under. And anyone on the internet can access
 4 the personal and private information of River City's principals. Plaintiffs
 5 bring this action to salvage their reputation, recover their damages, and
 6 prevent Defendants from victimizing them—or anyone else—in the
 7 future. This case presents few serious doubts as to the defendants'
 8 liability. The evidence—much of which comes directly from the
 9 defendants—is overwhelming and clear. Plaintiffs have preserved
 10 sufficient technical evidence to permit inspection by experts, if
 11 necessary, which will only serve to corroborate their story.

- 12 2. **Defendant Chris Vickery:** Mr. Vickery denies all alleged wrongdoing in
 this matter and asserts affirmative defenses that otherwise prevent
 Plaintiffs' recovery. At all times relevant to the allegations contained in
 Plaintiffs' Complaint, Mr. Vickery acted lawfully and Mr. Vickery is not
 liable or responsible for any of the alleged damages.
- 13 3. **Defendant Kromtech:** Kromtech has moved to dismiss for lack of
 personal jurisdiction and for failure to state a claim, and anticipates
 renewing its motion to dismiss following jurisdictional discovery.
 Kromtech retained Mr. Vickery as an independent contractor to consult
 on Kromtech's network security and to supply two articles each month
 to be published on the security blog hosted on Kromtech's
 MacKeeper.com website. Kromtech did not exercise control over the
 alleged conduct by Mr. Vickery and contents of his article that the
 Complaint alleges to be actionable.
- 14 4. **Defendant International Data Group:** International Data Group, Inc.
 ("IDG") has moved to dismiss for lack of personal jurisdiction and will
 be renewing its motion following jurisdictional discovery. IDG did not

1 publish any articles, did not engage in any of the conduct alleged in the
 2 Complaint, and did not assist or approve of any other Defendant in
 3 engaging in any of the conduct alleged in the Complaint.

- 4 5. **Defendant CXO:** CXO Media, Inc. (“CXO”) has moved to dismiss for
 5 lack of personal jurisdiction and will be renewing its motion following
 6 jurisdictional discovery. CXO did not assist, contribute to, facilitate, or
 7 otherwise aid and abet the actions of any other Defendant in obtaining
 8 any materials (electronic or otherwise) unlawfully from Plaintiffs. The
 9 only act of any Defendant that was approved by CXO was the authoring
 10 and publishing of Mr. Ragan’s article on CSO Online, which CXO
 11 contends is not defamatory. Further, the article was based on information
 12 obtained by Mr. Ragan from Vickery, but neither CXO nor Mr. Ragan
 13 played any part in the allegedly unlawful acts of intrusion into Plaintiffs’
 14 computers. The Supreme Court has expressly held that publishing
 15 documents provided by a third party does not make a journalist liable for
 16 any wrongdoing that the provider of the documents engaged in to obtain
 17 the documents. *See Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001).
- 18 6. **Defendant Steve Ragan:** Mr. Ragan may file a motion for
 19 reconsideration regarding the denial of his motion to dismiss for lack of
 20 personal jurisdiction and, in any event, contends that he is not liable on
 21 any claims. He in no way assisted, contributed to, facilitated, or otherwise
 22 aided and abetted Vickery or any other Defendant in obtaining any
 23 materials (electronic or otherwise) unlawfully from Plaintiffs. Mr. Ragan,
 24 a journalist, authored a non-defamatory article based on information that
 25 he received from Vickery on a matter of public concern. Mr. Ragan did
 26 not participate in any of the alleged illegal acts of intrusion into Plaintiffs’
 27 computers, and he is not liable. The Supreme Court has expressly held
 28 that publishing documents provided by a third party does not make a

1 journalist liable for any wrongdoing that the provider of the documents
2 engaged in to obtain the documents. *See Barwicki v. Vopper*; 532 U.S.
3 514, 535 (2001).

4

5 B. The parties agreed that without completing jurisdictional discovery and
6 making renewed motions to dismiss in response to an amended complaint,
7 they cannot resolve issues of jurisdiction and venue.

8

9 C. The parties anticipate the following motions. The following statements
10 present the particular views of the identified party or parties:

11 1. By Plaintiffs:

12 a. A motion for protective order related to Defendants' notices of
13 deposition when the Court has only ordered early discovery as to
14 i. The relationship between CXO, Vickery and Ragan; and
15 ii. The relationship between IDG and CXO.

16 2. By IDG:

17 a. Renewed motion to dismiss for lack of personal jurisdiction;
18 b. A motion to compel depositions of Plaintiff River City Media,
19 LLC's corporate representative and a deposition of Plaintiff Matt
20 Ferris for the limited purpose of jurisdictional discovery;

21 3. By CXO:

22 a. Renewed motion to dismiss for lack of personal jurisdiction;
23 b. A motion to compel deposition of Plaintiff River City Media, LLC's
24 corporate representative and a deposition of Plaintiff Matt Ferris for
25 the limited purpose of jurisdictional discovery;

26 4. By Ragan:

27 a. A motion for reconsideration of Defendant Ragan's motion to
28 dismiss.

1 5. By Kromtech:

2 a. Renewed motion to dismiss for lack of personal jurisdiction.

3 6. By Vickery:

4 a. A fact-based dispositive motion.

5

6 D. The parties discussed the possibility of settlement and concluded that while
7 there are no present settlement discussions, future settlement negotiations
8 may proceed depending on how the litigation evolves.

9

10 E. The parties discussed the creation of a joint discovery plan and came to the
11 following agreements:

- 12 1. Defendant Vickery and the Plaintiffs will continue with their merits-
13 discovery that is already in progress. Both Defendant Vickery and
14 Plaintiffs have already made the necessary Rule 26(a)(1) disclosures.
- 15 2. Defendants CXO, IDG, and Kromtech will be limited to exchanging
16 jurisdictional discovery requests with Plaintiffs. The parties suggest that
17 jurisdictional discovery be completed by January 31, 2018, with a
18 deadline to amend the complaint of February 14, 2018. The parties who
19 must respond to the amended complaint will file such responses by
20 March 14, 2018. If any party's response is a motion, any opposition to
21 that motion will be due four weeks later, with another three weeks
22 allocated for reply briefing.
- 23 3. Plaintiffs and Defendants CXO, IDG, and Kromtech will not conduct
24 merits-based discovery until jurisdictional questions have been resolved.
- 25 4. Subject to a possible motion for reconsideration on personal jurisdiction,
26 Plaintiffs and Ragan are free to begin merits-based discovery upon the
27 Court's entry of a scheduling order.

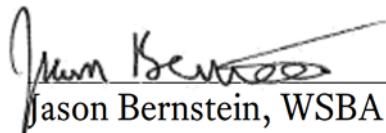
- 1 5. The parties do not feel that any changes need to be made in the
2 limitations on discovery imposed by the Federal Rules or by local rule.
3 6. The parties also discussed the need to submit a stipulated protective
4 order to the Court. The parties will present a model Protective Order by
5 November 28, 2017.
6 7. The parties discussed production format for any electronic discovery.
7 Plaintiffs indicated that they could likely provide all electronic discovery
8 in native format, or any other reasonable format requested by the
9 propounding party.
- 10
- 11 F. Defendants IDG, CXO, and Kromtech will disclose the information required
12 by Rule 26(a)(1) on or before fourteen days after the Court has ruled on the
13 renewed motions to dismiss for lack of personal jurisdiction. Ragan will
14 disclose the information required by Rule 26(a)(1) by November 29, 2017.
- 15
- 16 G. The parties discussed potential trial dates and agreed upon an initial trial date
17 of June 10, 2019. The parties anticipate that 10 trial days will be sufficient in
18 this litigation. The parties agreed to calculate all remaining deadlines based
19 upon the Conference Notice.
- 20
- 21 H. The parties did not identify any necessary or recommended special
22 procedures, modifications to the standard pretrial procedures, or possible
23 methods of bifurcation as stated in ¶ e(2)–e(4) of the Conference Notice.
- 24
- 25 I. The parties stated that they were all preserving all discoverable information.
- 26
- 27 J. The parties agreed that while the case was not particularly complex, it will
28 likely involve some novel legal issues and specialized proof.

1 K. The parties do not wish to request a Magistrate Judge for this matter.
2

3 L. The parties agreed on a preference to notice motions and other matters in
4 Spokane.
5

6 Dated: November 18, 2017

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17 Dated: November 18, 2017

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that all participants in the case are registered CM/ECF users and that service of the foregoing documents will be accomplished by the CM/ECF system on November 18, 2017.

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